



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO
CORPS OF ENGINEERS
1325 J STREET
SACRAMENTO, CALIFORNIA 95814-2922

January 26, 2015

Office of Counsel

SUBJECT: Freedom of Information Act Request; FA-15-0041; All Documents Pertaining to the Permitting Process for the Florida River Infiltration Gallery

Regional Freedom of Information Officer
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

Dear Regional Freedom of Information Officer:

In responding to the enclosed Freedom of Information Act request from Mr. Pete Diethrich with Tegre Corporation, I located the enclosed records that originated with your agency. I have been informed that you are responsible for making a releasibility determination for your agency.

Enclosed are email and correspondence for your review. Please reply directly to the requester as to releasibility for these records. I defer to your judgment on releasibility.

I would appreciate a copy of your reply to the requester. Please send it to my attention at the above letterhead address and refer to my tracking number FA-15-0041. For your reference also enclosed is a copy of my final response to the requester. If you have any questions regarding the processing of this request, please contact me directly, preferably by email at Andrea.L.Vaiasicca@usace.army.mil, or by telephone at (916) 557-7204.

Sincerely,

VAIASICCA.ANDR
EA.LYNN.1231280
185

Digitally signed by
VAIASICCA.ANDR.EA.LYNN.1231280185
DN: cn=US, o=U.S. Government, ou=DoD,
ou=PKI, ou=USA,
cn=VAIASICCA.ANDR.EA.LYNN.1231280185
Date: 2015.01.26 11:25:58 -08'00'

Andrea L. Vaiasicca
Freedom of Information Act Specialist

Enclosures

Copy Furnished (wo/encls):

Mr. Pete Diethrich, Tegre Corporation, 1199 Main Avenue, Suite 101, Durango, Colorado 81301

SUBJECT: Freedom of Information Act Request for the Florida River Infiltration Gallery (BP Building) near the La Plata County/Durango Colorado Airport.

TO:

Phyllis M. Svetich

Freedom of Information Officer
Office of Counsel (CESPK-OC)
US Army Engineer District, Sacramento
1325 J Street, Room 1440
Sacramento, California 95814-2922
Phone: (916) 557-7236
Fax: (916) 557-5118

FROM:

Name: **Pete Diethrich**, Environmental/Regulatory Specialist
Mailing address: 1199 Main Avenue, Suite 101, Durango, CO 81301
Phone number: 970-828-1815
E-mail address: pete.diethrich@tegrecorp.com
Company: Tegre Corporation

Date: December 4, 2014

Dear Ms. Svetich:

Pursuant to the Freedom of Information Act (FOIA) 5 U.S.C. 552, I would like to request the following federal government records which are under your agency's control:

Please include ALL documents pertaining to the permitting process for the Florida River Infiltration Gallery (BP Building) near the La Plata County/Durango Colorado Airport. We are researching the permitting process so please include all related documents including, but not limited to:

- Environmental Reports
 - CWA §404 Nationwide Permits
 - CWA §401 Water Quality Certification
 - Air Quality permits
- Public Comments
- All emails
- Maps
- Drawings
- Applications
- Planning documents

S: 2/3

I have been informed that processing fees for FOIA requests include professional search and review at \$44.00 per hour (billable on the ¼ hour) and reproduction costs at \$0.15 per page for standard copies and \$1.00 each for oversized and colored copies. I am willing to pay all applicable processing fees.

I look forward to receiving the requested documents within twenty (20) working days as required by statute. Please contact me with any questions or concerns.

Thank you for your time,

Pete Diethrich
O-970-828-1815
C-970-946-6739



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO
CORPS OF ENGINEERS
1325 J STREET
SACRAMENTO, CALIFORNIA 95814-2922

January 26, 2015

Office of Counsel

SUBJECT: Freedom of Information Act Request No. FA-15-0041; All Documents Pertaining to the Permitting Process for the Florida River Infiltration Gallery

Mr. Pete Diethrich
Tegre Corporation
1199 Main Avenue, Suite 101
Durango, Colorado 81301

Dear Mr. Diethrich:

Reference your Freedom of Information Act request received in this office on December 4, 2014. Enclosed you will find agency records relating to documents pertaining to permitting process for the Florida River Infiltration Gallery.

Although a majority of the information requested has been provided, names and addresses of private individuals contained in the regulatory file have been redacted pursuant to 5 U.S.C. § 552 (b)(6) of the Freedom of Information Act. Exemption 6 protects privacy interests to the extent that information about individuals is contained in personnel, medical and similar files, when the disclosure of such information would constitute a clearly unwarranted invasion of privacy. See, Strout v. United States Parole Comm'n, 40 F.3d 136, 139 (6th Cir. 1994).

Also, names of Department of Defense (DoD) employees contained in the headers of e-mails and other similar lists of names within the records have been redacted pursuant to 5 U.S.C. § 552 (b)(6) of the Freedom of Information Act. In response to the terrorist attacks on the United States in the fall of 2001, DoD revised its policies which implement the Freedom of Information Act. At that time, the decision was made to withhold lists of names of all DoD employees. The court upheld this policy decision stating, "The privacy interest protected by exemption six of the Freedom of Information Act encompasses not only the addresses, but also the names of federal employees." See, Judicial Watch, Inc. v. United States, 84 Fed. Appx. 335 (4th Cir. (2004)).

I trust that you will appreciate the consideration upon which this determination is based. However, because your request has been partially denied, you are advised of your right to appeal this determination through this office to the Secretary of the Army (ATTN: General Counsel). You must send your appeal in sufficient time to reach the Secretary of the Army no later than 60 days of the date of this letter. The envelope containing the appeal should bear the notation "Freedom of Information Act Appeal" and should be sent to: U. S. Army Corps of Engineers, Sacramento District, ATTN: CESPCK-OC, 1325 J Street, Room 1440, Sacramento, California 95814.

For the purpose of assessing fees, I have classified you as a commercial requester under 32 C.F.R. § 518.85(b)(2)(i). The charge for providing the requested information is less than \$15.00 therefore no fee payment is required for this request.

If you have any questions regarding the provided information, please contact Ms. Sara Platt, Freedom of Information Act Officer, at the above letterhead address or by calling (916) 557-7596.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. L. Faustino', with a long horizontal flourish extending to the right.

A. L. Faustino
District Counsel
Initial Denial Authority

Enclosures



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

JUL 10 2012

Ref: 8EPR-EP

Cory Kindle
Prymorys Environmental Consulting, Inc.
150 Rockpoint Drive
Durango, CO 81301

RE: CWA §401 Water Quality Certification for
Durango-La Plata County Airport Water Source
Supply System Infiltration Gallery;
SPK-2012-00170

Dear Ms. Kindle:

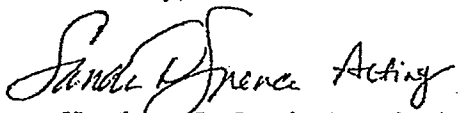
The Environmental Protection Agency (EPA) Region 8 has received a request from Prymorys Environmental Consulting, Inc. representing Durango La-Plata County Airport for a Clean Water Act (CWA) Section 401 water quality certification (certification) for an Army Corps of Engineers (Corps) CWA Section 404 permit for the above referenced project. On behalf of the Southern Ute Indian Tribe, Durango-La Plata County Airport Water Source Supply System Infiltration Gallery is granted certification with conditions as described in the enclosure.

The Airport is proposing to construct and operate an infiltration gallery in the Florida River. The purpose for the Airport Infiltration Gallery of the proposed project is to provide additional water supplies at a rate of 6.75 gallons per minute (gpm) to meet water demands for the Airport and existing BP America Production Company (BP) facilities, consisting of an office building and warehouse. A water supply is necessary for the project to proceed. The project will cross wetland areas in order to transport water collected from the Florida River to the existing infiltration system. The applicant has water rights for the construction of the infiltration gallery and the structure is within 200 feet of the decreed location. The proposed infiltration gallery will consist of approximately 30 linear feet of slotted pipe (infiltration pipe) buried roughly 3 to 5 feet below an existing riffle in the streambed of the Florida River. The infiltration pipe will lay perpendicular to river flow and will be connected to cleanout pipes at each end. Perforated airlines will be placed parallel and adjacent to the slotted pipe. A buried 4 inch intake pipe, connected to the infiltration pipe at the northeast bank of the river, will direct flow underground to the existing infiltration gallery pump vault located approximately 140 feet to the northeast. Installation of the intake pipe will occur within a 50-foot construction disturbance corridor. From the pump vault, the infiltration gallery pumps to the lower pump house. In order to connect the intake pipe to the existing infiltration gallery, the piping will cross the adjacent wetland area.

The project has been discussed with representatives of the applicant, the Corps, and the Southern Ute Indian Tribe. In consideration of EPA water quality criteria, the potential impacts of the project have been reviewed. Hydro-geomorphic monitoring of the integrity of the river bed and bank at the project location will be required. If the river shows signs of deterioration, additional restoration and protection of the project site may be required.

This letter should be retained in your files of the applicable Corps Permit as documentation of EPA certifying Durango-La Plata County Airport Water Source Supply System Infiltration Gallery; SPK-2012-00170 with the enclosed conditions. If you have any questions please contact my staff, Toney Ott, at the above address, by phone at 303-312-6909, or by email at ott.toney@epa.gov.

Sincerely,


Humberto L. Garcia, Jr., Director
Ecosystems Protection Program

Enclosure

cc: Kara Hellige

Army Corps of Engineers

Sal Valdez

Southern Ute Indian Tribe

Ron Dent

Director of Aviation, Durango-La Plata County Airport

ENCLOSURE

CWA Section 401 Certification for Durango-La Plata County Airport Water Source Supply System Infiltration Gallery; SPK-2012-00170 is granted with the following conditions:

- 1) Project proponent/contractor must have a copy of the EPA CWA 401 certification conditions on site.
- 2) Project proponent/contractor must notify the Southern Ute Indian Tribe (Sal Valdez, office: 970-563-0135 x2217) 48 hours prior to construction, with the most current construction timeframe and plans. All requested submittals must be copied to Southern Ute Indian Tribe Water Quality Program.
- 3) Activities in the wetland are certified with the following conditions:
- 4) Disturbed wetland soils and vegetation must be reconfigured to a reasonable representation of a reference palustrine emergent wetland class. Nursery and seed stock is to be acquired from localized sources.
- 5) Applicant/contractor should manage disturbed wetland soil in a manner that optimizes plant establishment for the site.
- 6) The temporary impacts to the wetland area will be monitored to ensure that disturbed areas are restored to at least their original condition. Vegetation in wetlands will be compared to a location in the undisturbed adjacent wetlands to determine percent cover and vegetation.
- 7) When operating equipment or otherwise undertaking construction in an ephemeral water or wetland the following conditions apply:
 - a. This certification requires all equipment to be inspected for oil, gas, diesel, anti-freeze, hydraulic fluid, and other petroleum leaks. All such leaks will be properly repaired and equipment cleaned prior to being allowed on the project. Leaks that occur after the equipment is moved to the project site will be fixed that same day or the next day or removed from the project area. The equipment is not allowed to continue operating once any leak is discovered.
 - b. Construction equipment should not be operated below the existing water surface except as follows:
 - i. Fording at one location at each crossing is acceptable; however, vehicles should not push or pull material along bed or bank below the existing water level. Impacts from fording should be minimized.
 - ii. Essential work below the waterline should be done in a manner to minimize impacts to the aquatic system and water quality.
 - c. Containment booms and/or absorbent material must be available onsite. Any spills of

- i. Petroleum products must be reported to the Corps, Tribe, and EPA within 24 hours.
 - ii. All equipment is to be inspected and cleaned before and after use to minimize the spread of invasive or undesirable species.
- 8) Upland, buffer and adjacent vegetation should be protected except where its removal is necessary for completion of the work. Revegetation should be completed as soon as practicable. Applicant/contractor should revegetate disturbed soil in a manner that optimizes plant establishment for the site. Revegetation may include topsoil replacement, planting, seeding, fertilization, liming, and weed-free mulching as necessary. Applicant/contractor should use native material where appropriate and feasible. Nursery and seed stock is to be acquired from localized sources. Where practical, stockpile weed-seed-free topsoil and replace it on disturbed areas. Any cut and fill slopes that will not be protected with riprap should be revegetated with appropriate species to prevent erosion. Monitoring to ensure satisfactory revegetation and that noxious weeds do not establish should occur during the next growing season or more often if required by the Corps permit conditions. This certification does not allow for the introduction of non-native flora or fauna.
- 9) Spoil piles should not be placed or stored within the delineated wetland. Spoil piles should be placed on landscaping fabric or some other material to separate the spoil material and allow retrieval of the spoil material with minimal impact.
- 10) Access roads must be constructed outside of waters /wetlands where alternatives are available.
- 11) Proposed under drains (tile, french drains, etc.) must be declared and described if proposed with the project.
- 12) Any temporary crossings, bridge supports, cofferdams or other structures that are necessary during the permit activity should be designed to handle high flows that can be anticipated during permit activity. All temporary structures should be completely removed from the waterbody at the conclusion of the permitted activity and the area restored to a natural appearance.
- 13) This certification does not authorize any unconfined discharge of liquid cement in waters of the United States. Grouting riprap must occur under dry conditions with no exposure of wet concrete to the waterbody.
- 14) Any mitigation required by the Corps permit shall be completed prior to, or concurrent with, the project impacts. Wetland mitigation should be in-kind and on-site replacing native wetland plant communities lost from all project impacts. If the Corps recommends a mitigation bank or in-lieu fee program and the permittee chooses to utilize the option of a mitigation bank or in-lieu fee program, the applicant must submit the name of the bank or program, and the number and type of credits to be purchased prior to project impacts.
- 15) Installation of the slotted infiltration pipe will occur in dewatered conditions and the trench will be backfilled to pre-existing contours using engineered fill.

- 16) The applicant shall develop a plan to monitor the hydro-geomorphic integrity of the river reach bed and bank at the project location. The plan should monitoring for river scour and degradation caused by construction disturbance and activity. The plan shall be submitted to Southern Ute Indian Tribe, the Corps, and the EPA for comment prior to the start of the project. Monitoring results should be submitted annually at a minimum. If the river shows signs of deterioration, the applicant must report to the Corps, Tribe, and the EPA immediately. Additional restoration and protection of the project site may be required.
- 17) Any unexpected and additional impacts to waters of the US should be reported to the Corps, the EPA, and the Southern Ute Tribal Water Quality Coordinator.
- 18) Monitoring plans and annual reports should be submitted to the EPA, Tribe, and the Corps. Photographs of the completed project, stabilization, and revegetation should be submitted to EPA immediately after the project is completed and after two growing seasons. Electronic submittals of the photographs are preferred. Hard copy or disk submittals of post project photographs of the site may be submitted to the:

US EPA Region 8 Aquatic Resources Protection and Accountability Unit
1595 Wynkoop Street, 8EPR-EP
Denver Colorado 80202
Attention: CWA 401 Certification Monitoring, SPK-2012-00172



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

JUL 10 2012

Ref: 8EPR-EP

Cory Kindle
Prymorys Environmental Consulting, Inc.
150 Rockpoint Drive
Durango, CO 81301

RE: CWA §401 Water Quality Certification for
Durango-La Plata County Airport Water Source
Supply System Infiltration Gallery;
SPK-2012-00170

Dear Ms. Kindle:

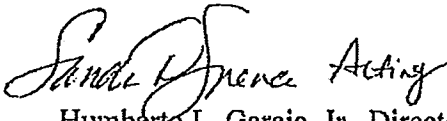
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The project has been discussed with representatives of the applicant, the Corps, and the Southern Ute Indian Tribe. In consideration of EPA water quality criteria, the potential impacts of the project have been reviewed. Hydro-geomorphic monitoring of the integrity of the river bed and bank at the project location will be required. If the river shows signs of deterioration, additional restoration and protection of the project site may be required.

This letter should be retained in your files of the applicable Corps Permit as documentation of EPA certifying Durango-La Plata County Airport Water Source Supply System Infiltration Gallery; SPK-2012-00170 with the enclosed conditions. If you have any questions please contact my staff, Toney Ott, at the above address, by phone at 303-312-6909, or by email at ott.toney@epa.gov.

Sincerely,


Humberto L. Garcia, Jr., Director
Ecosystems Protection Program

Enclosure

cc: Kara Hellige

Army Corps of Engineers

Sal Valdez

Southern Ute Indian Tribe

Ron Dent

Director of Aviation, Durango-La Plata County Airport

Hellige, Kara A SPK

From: Sarah Fowler [Fowler.Sarah@epamail.epa.gov]
Sent: Thursday, March 29, 2012 12:20 PM
To: Hellige, Kara A SPK; Toney Ott
Cc: Karen Hamilton
Subject: EPA comments on PN SPK 2012 00170, Ron Dent, Durango-La Plata County Airport, Infiltration Gallery/Florida River

Dear Ms. Hellige:

We have reviewed the referenced Public Notice requesting authorization for the placement of fill material in waters of the U.S. in conjunction with construction of an infiltration gallery along with associated infrastructure in the Florida River, La Plata County, Colorado. The project purpose is to provide additional water supply to meet their water demands.

Our understanding of the proposed project is that approximately 2.5 acre feet of water will be diverted annually using the infiltration gallery. Because the Environmental Protection Agency (EPA) is concerned about the proposed project's direct, indirect, and cumulative adverse impacts to aquatic resources from withdrawal of water from the Florida River, we request additional information regarding water supply alternatives and aquatic ecosystems impacts for our recommendation of compliance with the Section 404(b)(1) Guidelines. Without this critical information, we believe the project does not comply with the Guidelines due to the lack of information needed to determine compliance (40 CFR 230.12(a)(3)(iv)).

In view of the limited information provided in the public notice and applicant's project purpose of providing water supply to the airport, we believe that there may be less damaging practicable alternatives available to the applicant that will have less adverse impact on the aquatic ecosystem. Practicable alternatives are defined as alternatives that are available and capable of being done taking into consideration costs, existing logistics and technology. On-site or proximate off-site storage facilities may reduce the adverse impacts resulting from instantaneous water demand during low flow periods. Should storage be determined to not be practicable for this project, then additional analysis regarding instream flows, diversion rates, and potential adverse impacts to stream flow quantity and quality should be evaluated. In order to fully understand the project effects on the Florida River, the scope of impact analysis should include any stream resources in the immediate project area, downstream of the project area, and any areas affected by the water withdrawals or operational modifications. Should in-stream quantity or quality be altered by this project, the information necessary for a Clean Water Act (CWA) Section 404(b)(1) Guidelines compliance determination should include:

- 1) characterization of potential impacts to the existing flow regime,
- 2) initially, an analysis and comparison of pre- and post-project flows as characterized for each affected stream segment,
- 3) cumulative total diversions as the proportion of average monthly (or smaller time step) stream flow diverted where impacts from water withdrawals are occurring from multiple past, present and anticipated future diversions,
- 4) potential effect on magnitude, duration and frequency of high flow events, and
- 5) if the proposed project has potential significant effects on the flow regime (including high or low flows), a more thorough evaluation of potential implications of these changes on channel complexity, channel maintenance, aquatic habitat and aquatic life should be performed.

In addition, Section 404(b)(1) of the CWA requires that adverse impacts to wetlands, streams (including stream morphology and riparian habitat) and other waters of the United States be avoided to the maximum extent practicable. A sequential approach (avoidance, minimization, and lastly compensation) to mitigation is required. Specifically, the February 7, 1990 Memorandum of Agreement (MOA) between the United States Department of the Army and EPA concerning the determination of mitigation under the CWA Section 404(b)(1) Guidelines states that:

"Compensatory mitigation may not be used as a method to reduce environmental impacts in the evaluation of the least damaging practicable alternatives for the purposes of requirements under Section 230.10(a)."

After all practicable alternatives are evaluated, the least environmentally damaging practicable alternative should be identified and selected. If there are unavoidable adverse impacts with a selected alternative, then mitigation would be applied to assure that resource functions and values are compensated to an acceptable level. Mitigation for any project needs to be based on the specific environmental factors of the project site or area of influence.

If unavoidable adverse impacts are projected, restoration of hydrologically degraded wetlands or stream is generally

preferred to wetlands/stream creation. Proposed mitigation should not result in net loss of wetlands or stream functions and values. Sufficient information should be developed to determine the extent to which restoration can mitigate unavoidable impacts associated with various alternatives. EPA would like to see early documentation of potential wetland/riparian areas and acres that have good potential for restoration to adequately compensate for lost functions and values, and where they are located in the project vicinity.

If you have any questions or concerns regarding these comments or recommendations, please contact me at your convenience.

Sarah Fowler, Biologist
Wetlands and Watershed Unit, EPR-EP
EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
303-312-6192
fax 303-312-7206